

REMARKS

In response to the communication from the Examiner dated 05/20/2004, applicant respectfully requests a notice of allowance at the earliest possible time frame in that Examiner's continued prosecution of the present application, which has been overruled on appeal, is improper.

Applicant wishes to reassert the entire prosecution of this application herein as if rewritten in its entirety.

The examiner has rejected the claims allowed on appeal due to a 'newly found reference Montgieux'; however, this reference was cited in Tau, and provides no additional motivation for combination than the Tau reference. Merely interchanging one old reference with another in no way negates the fact that the grounds for rejection were all issues and references that were fully considered and decided during prosecution of this matter.

According to M.P.E.P 1214.04:

the "Examiner should never regard such a reversal [by the Board of Appeals] as a challenge to make a new search to uncover other and better references."

Further:

"If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, he or she should submit the matter to the Technology Center (TC) director for authorization to reopen prosecution..."

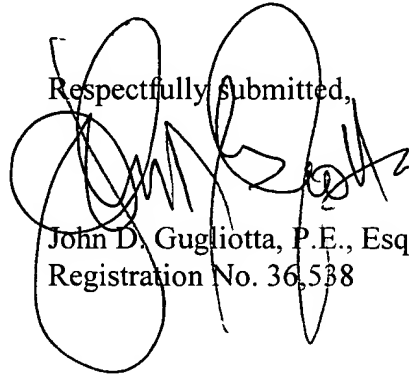
This has not been done.

Further still, under M.P.E.P. 1214.07 and 37 C.F.R. 1.3198:

"Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner, except under the provisions of 1.196, without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown."

Therefore, in view of thorough and complete prosecution of this matter, and further in view of the full and final determination by the Board of Appeals in complete favor of the Applicant, the applicant submits that allowance of the present application and all claims is in order and is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'John D. Gugliotta', written over the typed name and registration number.

John D. Gugliotta, P.E., Esq.
Registration No. 36,538

The Law Offices of John D. Gugliotta
202 Delaware Building
137 South Main Street
Akron, OH 44308
(330) 253-5678
Facsimile (330) 253-6658